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Michael J. Barkley

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

Manteca, CA 95336

JUN 19 A 11:23

June 10, 2012

SENSITIVE

Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 6595

Re: Complaint for violation of donation and reporting rules

I am Michael Barkley, unsuccessful candidate for Congress in the recent California Primary Election of 06/05/2012, California new Congressional District CA-10, Candidate #H2CA00096, committee "Mike Barkley for Congress Committee" Candidate Committee #C00495507. I did not have or use any campaign signs so my hands are clean in this matter.

This is to complain of Congressman Jeff Denham in that same election for the same District, Candidate #H0CA19173, committee "Denham for Congress" Candidate Committee #C00473272 for failure to report in-kind donations, for acceptance of in-kind donations from persons or entities not allowed to make donations or who had exceeded their donation limits, as well as to complain of those persons or entities who made knowingly or unknowingly such unlawful donations.

I have skimmed through various FEC guides and I do not find any exemptions for in-kind donations involving prime outdoor advertising space for campaign signs. During the campaign Mr. Denham and his committee placed numerous campaign signs in high-traffic locations which seemed to be very effective in helping him win the election. I have not found any reporting of payments to owners of such locations or any reporting for in-kind donations of fair market value for those valuable advertising sites.

I considered this problem for several days after the 06/05/2012 election and when I went out for a few hours this afternoon to take photographs of typical sign locations I found that most of the signs of all candidates have disappeared, even after just 4 days, presumably taken down by the various campaigns and candidates. Still, I have photographed a sampling of his campaign signs and logged their locations, some 42 in total, and I assume there are and were many more. The photos are on my web site at <http://www.mjbarkl.com/denham2.htm> and are numbered 1 through 12 and 14 through 43 with location descriptions. I understand these signs have been up for four to eight weeks. I incorporate that web page of photographs in this complaint.

Typical of these photos is #1, for the southeast corner of the intersection of Louise Ave

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and North Main in Manteca, CA. A website entitled "Manteca Traffic Counts" at <http://www.ci.manteca.ca.us/biz/AreaInformation/traffic-counts.htm> shows Main & Louise, 37,400 vehicles per day in 2008 or some 2,000,000 "impressions" over an 8-week period. It is a very busy intersection. I understand Ed Cumdoza Enterprises owns that corner but do not know whether or not he is incorporated. I understand he also owns all or part the northwest corner, photo #5. I would expect to find either payments to him or in-kind donations of some \$4,000 for this advertising space for minimum outdoor advertising industry durations but I do not find his name anywhere in the periodic reports since 01/01/2012.

One outdoor advertising rate card entitled "2010 : Eyes on Ratecard, Clear Channel Outdoor : Media Planning Guide" is at <http://www.clearchanneloutdoor.com/assets/downloads/media-planning-guide/2010-11-eyes-on-rates.pdf>. It covers Clear Channel rules for outdoor media. As you can see from the rate card, such outdoor displays can get quite expensive depending on the display size and type and number of "eyes" that will see the site. Descriptions of the various kinds of outdoor media may be found at the "buttons" along the left side of a page at <http://billboardconnection.com/our-services/>. Although the unexplained outdoor advertising jargon on the rate card interferes with its use in this situation, it would appear that Mr. Denham's roadside signs are street-level equivalent to "junior posters" and that a 4-week cost for 1,000,000 impressions may be about \$1,000. N. Main & Louise may have more per-view value since traffic from all directions sits stopped in full view of the sign while waiting for the signal lights to go through their 4 cycles. 2 signs on 2 corners for 8 weeks would be about \$4,000? Plus 2 more signs one block north, total \$8000?

Photo #4 is the same sign as #3, showing Mr. Denham's Campaign Committee and number and the name and 800 number of the sign manufacturer.

The same traffic count web page shows State Route 99 at the South Junction of SR 120 to be 110,000 vehicles per day, or close to 3 times the exposure of N. Main & Louise. All of the photos submitted are for signage along SR-99 clustered in Manteca, Turlock, and Salida. I presume there were many others that have been taken down.

Photo #10 is of 2 signs on top of what appears to be a South San Joaquin Irrigation District structure. Photo #27 appears to be in the SSJID right-of-way for their Drain #3. Photo #16 appears to be in the right-of-way for a Turlock Irrigation District lateral. Mr. Denham's cozy relationship with the various irrigation districts in the region would lead me to reject any assertion the districts might have that they were unaware of the presence of his signs. Some California municipalities are incorporated. I do not know if these irrigation districts are incorporated, but if they are, that alone would make in-kind donations by them unlawful.

Photo #14 is of a sign that is either in the railroad or the State Highway or both rights-of-way. I believe the railroad is Union Pacific, successor to Southern Pacific.

Photos #38, 39 and 40 are of signs on the fences of Hogan Manufacturing, Inc. in

Escalon, CA, which makes the advertising display service unlawful unless purchased assuming the premises are not leased from an unincorporated person for instance. Photo #23 is on a CFN Cardlock property which may or may not be an incorporated CFN network member. Photo #20 is on the property of a Line-X truck liner dealer which may or may not be incorporated. Many of the freeway frontage signs along SR 99 are on large farm parcels, which may or may not be owned by corporations.

Manteca is about 1/10th the population of the 10th Congressional District. If one were to rate the 4 signs in photos on N. Main & Louise at \$1,000 per month, and the 10 signs in photos on Manteca freeway frontage at \$3,000 per month, then the in-kind donations in the Manteca area alone for 2 months would amount to \$68,000. I do not find these transactions in Mr. Denham's PEC reports. Not all towns in the 10th CD have the freeway frontage that Manteca and Turlock have, but many do - if there was Denham signage on freeway frontage in those other towns it seems to have been removed. Even so, most towns in the 10th CD have state highway frontage, see for instance Photos 36, 37, 38, 42, & 43 along SR 120 in Escalon which is the main link to Yosemite and shows 42,000 vehicles per day at the Manteca end on the Manteca traffic count web page noted above. To make a conservative crude guess, multiply the Manteca signage by 5 (instead of 10, and add residential yard signs) to produce a District-wide total yielding an underreporting of in-kind donations of some \$340,000.

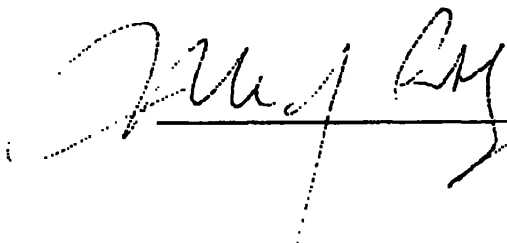
Because of all this, I petition the FEC to, and pray that the FEC will demand of Mr. Denham and his committee:

- 1) Furnish copies of all invoices for signs of all sizes purchased within the past 18 months.
- 2) Furnish an on-hand inventory count of signs not deployed and allow inspection of those signs to verify their unused condition.
- 3) For all signs not in that on-hand count, make a separate list for residential yard signs and another for all other signs, and for each sign on these two lists state the location the sign was placed regardless of whether or not permission was obtained to place the sign.
- 4) Identify which of the residential yard signs was placed in a high-traffic location and suggest a verifiable value for the exposure of each residential yard sign.
- 5) For signs placed other than residential yard signs specify the financial agreement with the owner of the land upon which they were placed, regardless of whether or not the sign was placed without permission.
- 6) For signs placed other than residential yard signs propose a fair, substantiated, independently-provable value for the outdoor advertising space using common outdoor advertising duration and pricing rules and defend the value proposed, preferably seeking the services of a qualified outdoor advertising expert in making those evaluations.
- 7) If the owner identified in #5 is a prohibited donor, that is, a person who has exceeded the allowable contribution totals, or a foreign national, or a corporation, or any other type of prohibited donor, and regardless of whether or not the sign was placed without permission, either negotiate a refund of the in-kind value to that person or entity or submit to prosecution for the violation and report that person or entity to the FEC for separate prosecution.
- 8) Amend all reports to reflect the in-kind donations or submit to prosecution.


Respectfully submitted,

Michael J. Barkley
Complainant

Signed and sworn to before me:



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State of California County of San Joaquin Subscribed and sworn to (or affirmed) before me on this <u>11</u> day of <u>June</u> , 20 <u>12</u> , by <u>Michael J. Barkley</u> personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me. (seal) Signature 
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